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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SAM CHAMREUN et al., Plaintiffs, v. SKOUSEN LAW, APC, et al., Defendants and Respondents; KNAPP, PETERSEN & CLARKE, Objector and Appellant.	B231681 (Los Angeles County Super. Ct. No. BC422113)

APPEAL from an order of the Superior Court of Los Angeles County. Rita Miller, Judge. Affirmed.

Knapp, Petersen & Clarke, and Andre E. Jardini, for Objector and Appellant.

Anderson, McPharlin & Conners, David T. DiBiase and Thomas K. Kearney, for Defendants and Respondents.

The law firm of Knapp, Petersen & Clarke appeals from the trial court's $750 discovery sanction order, contending that sanctions were improper because it had withdrawn as plaintiffs' counsel before supplemental discovery responses were due, and that the plaintiffs' replacement lawyers were ultimately responsible for the failure to answer the discovery requests. We affirm the trial court's order.

FACTS AND PROCEDURAL HISTORY

This discovery dispute arises from Knapp, Petersen & Clarke's representation of Sam and Amy Chamreun in the Chamreuns' legal malpractice action against the law firm, Skousen Law and several of its lawyers, based on Skousen's unsuccessful defense of the Chamreuns in an unlawful detainer action brought against them by their commercial landlord.[1] On February 8, 2010, Skousen served the Chamreuns with discovery requests: special interrogatories, two sets of form interrogatories, requests for admission, and requests for production of documents. Responses were due March 15, 2010, but on March 11, 2010, Knapp called Skousen, which was representing itself against the Chamreuns, and asked for an extension of time in which to respond. Skousen agreed that the discovery responses could be served by March 31, 2010.[2]

On March 31, Knapp served responses to the various discovery requests, but the responses consisted of the same boilerplate objection to each individual request: "Objection. This [discovery request] is overly broad, vague and ambiguous. Furthermore, this [discovery request] is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this [discovery request] insofar as it seeks the disclosure of information that is protected by the attorney-client and/or attorney work product privileges."

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1 We refer to the law firm of Knapp, Petersen & Clarke as Knapp, and to the Skousen firm and the Skousen individual defendants collectively as Skousen.

2 All further calendar date references occurred in 2010.

On April 6, Skousen wrote Knapp to complain that the objections had no merit, and demanded complete responses by April 15. In a phone conversation later that day that was initiated by Skousen, Knapp told Skousen that the Chamreuns planned to hire new counsel. On April 12, Skousen spoke with new counsel, Marcello DiMauro, and agreed to extend the Chamreuns time to respond until April 22. When no responses were ever served, Skousen brought motions to compel responses from the Chamreuns and to obtain discovery sanctions against the Chamreuns, DiMauro, and Knapp.

Knapp opposed the sanctions motion, contending that it determined on March 30 that it could no longer represent the Chamreuns, and served the boilerplate objections in response to the discovery requests in order to avoid prejudicing the Chamreuns' case. The relevant time line, as set forth in the declaration of Knapp attorney K.L. Myles, shows that: (1) the discovery requests were served February 8, and responses were due on March 15; (2) on March 11, Knapp asked for and received an extension of time to respond until March 31; (3) on March 26, Knapp first learned of issues that would require it to substitute out, and began to investigate those issues; (4) on March 30, Knapp determined it needed to substitute out and "was not able to represent [the Chamreuns] in any substantive fashion without violating ethical canons"; (5) on March 31, Knapp told the Chamreuns to hire new counsel, but, "[i]n the interim, [Knapp] was obligated to serve timely discovery responses comprised entirely of objections to avoid prejudicing plaintiffs' case"; (6) on April 5, new counsel took over for Knapp, and on April 12, new counsel were told by Skousen that responses were now due by April 15.

Based on this chain of events, Knapp contends that it was unable to act on the Chamreun's behalf, that responsibility for doing so fell to their new lawyer, DiMauro, and that it was improper to sanction Knapp for conduct occurring after it was no longer counsel of record. Knapp did not contend below, and does not contend on appeal, that

any of the Skousen discovery requests were improper or that any of its objections were in fact valid.[3]

The trial court granted Skousen's motions to compel discovery responses and award money sanctions. Knapp was ordered to pay sanctions of $750, and DiMauro was ordered to pay sanctions of $2,750. The Chamreuns' action against Skousen was later defeated by a nonsuit, and the subsequent judgment incorporated the sanctions award.[4] Knapp appealed, contending that the trial court erred by ordering sanctions against it.

DISCUSSION

Knapp relies on the principle that discovery sanctions may not be imposed to punish, only to prevent abuse of the discovery process, and, if possible, provide the party who brought a discovery motion with the information it tried to obtain. (*Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327.) Because Knapp had substituted out as the Chamreuns' counsel before the discovery motions were brought, Knapp contends that it was no longer in a position to provide the discovery Skousen had requested, and that the monetary sanctions could have only a punitive effect. Therefore, according to Knapp, it should not have been sanctioned.

We review the trial court's order for an abuse of discretion. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 991.) It is a misuse of the discovery process to make, without substantial justification, an unmeritorious objection to discovery. (Code

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[3] Without passing judgment on all of the discovery requests, we note a few that were clearly unobjectionable, including: requests for production of documents such as those evidencing the underlying unlawful detainer action, the written agreement between the Chamreuns and Skousen, bills received from and payments made to, Skousen, and the facts underlying certain contentions of the complaint; form interrogatories asking for the facts upon which their damage claims were based; and special interrogatories asking the Chamreuns to describe evidence and arguments that they claimed had been inadequately presented during the underlying unlawful detainer action, along with the facts supporting those contentions.

[4] Skousen also won a $4,000 judgment on its cross-complaint against the Chamreuns.

Civ. Proc., § 2023.010, subd. (e).) Money sanctions may be imposed against "anyone engaging" in misuse of the discovery process, including "any attorney advising that conduct . . . ." (Code Civ. Proc., § 2023.030, subd. (a).) Knapp has never argued, either below or on appeal, that the boilerplate objections it provided in response to every one of Skousen's discovery requests were meritorious. Instead, it effectively concedes the opposite, but limits its appellate argument to the notion that sanctions were inappropriate because it had withdrawn from representing the Chamreuns and was therefore unable to act on their behalf to oppose the motion or provide further discovery responses.

In evaluating this contention, we look first at the sequence of events. The discovery requests were served on February 8 and responses were initially due on March 15. Knapp asked for and was granted an extension of time to respond until March 31. It was only on March 30 that Knapp determined it could no longer represent the Chamreuns. On March 31, Knapp advised the Chamreuns to obtain new counsel, and served on Skousen the disputed discovery responses. Skousen did not learn that Knapp would be withdrawing until April 6 when Skousen phoned Knapp to complain about the discovery responses.

Next, we evaluate the facts in light of the grounds that justify an attorney's withdrawal from representing a client, and the attorney's obligations to that client until new counsel is in place.

Under Rule 3-700(C) of the Rules of Professional Conduct, a lawyer may withdraw for a variety of reasons, including the client's insistence that the lawyer present unmeritorious arguments or pursue an illegal course of conduct, the client's breach of a fee agreement, and the client's conduct makes it unreasonably difficult for the lawyer to perform effectively on the client's behalf.[5] However, Rule 3-700(A)(2) provides that a lawyer shall not withdraw from representation until he has taken reasonable steps to avoid foreseeable prejudice to the client's rights. The commentary to this rule notes that "[w]hat such steps would include, of course, will vary according to the circumstances.

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[5] All further rule references are to the Rules of Professional Conduct.

Absent special circumstances, 'reasonable steps' do not include providing additional services to the client once the successor counsel has been employed . . . ." (Discussion, 23 pt. 3 West's Ann. Codes, Rules (1996 ed.) foll. rule 3-700, pp. 408-409.)

Knapp's declaration in opposition to the sanctions motion said only that on March 30 it determined it could no longer represent the Chamreuns without violating unspecified ethical canons, and therefore had to substitute out of the case. The only mention of this issue on appeal comes in Knapp's appellate reply brief, where it states that its "relationship with its clients had broken down." At no time, either below or on appeal, has Knapp truly addressed this issue, either legally or factually. Based on this, the trial court could reasonably conclude that there was insufficient evidentiary support for the existence of any ethical conflict. Because the record is silent as to basis for the trial court's ruling, we imply that such a finding was made. (*Karlsson v. Ford Motor Co.* (2006) 140 Cal.App.4th 1202, 1217 (*Karlsson*).)

Assuming for the sake of discussion that Knapp's relationship with the Chamreuns had deteriorated to the point where withdrawal became ethically necessary, Knapp has also never explained how this prevented it from providing meaningful responses or proper objections to Skousen's discovery requests in the 51 days that elapsed between service of the discovery requests and the time when the discovery responses became due. Most important, Knapp has never addressed why it was unable to do so at any point before it determined it could no longer represent the Chamreuns. Based on Knapp's failure to address either of these points, the trial court could infer that Knapp did not have a justification – substantial or otherwise – to support its decision to provide a last-second, one-size-fits-all objection that lacked any merit as a response to every one of Skousen's numerous discovery requests. Once more, because of the silent record we imply that such a finding was made. (*Karlsson*, *supra*, 140 Cal.App.4th at p. 1217.)

Assuming for the sake of discussion that Knapp's ethical conflict with the Chamreuns did prevent Knapp from making proper discovery responses before the March 31 deadline, Knapp has also never explained why it did not call Skousen before the discovery responses were due and ask for a continuance until the Chamreuns could

obtain new counsel. Instead, it chose to remain silent and file a response that included at least some meritless objections, causing Skousen to spend time, and incur fees, reviewing the responses and then contacting Knapp to discuss the matter.[6] We hold that filing knowingly baseless objections under these circumstances without first giving opposing counsel the opportunity to avoid having to respond to those objections in the first instance is a form of discovery misuse. Once more, the silent record allows us to imply such a finding. (*Karlsson, supra,* 140 Cal.App.4th at p. 1217.)

As for Knapp's contention that its withdrawal from the case made the sanctions against it punitive and not remedial, it cites decisions that concern whether the level of sanction imposed went too far, not whether money sanctions can be imposed against attorneys who withdraw from a case after committing discovery misuse. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 487-488, disapproved on another ground by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4 [dismissal of action deemed proper sanction]; *Motown Record Corp. v. Superior Court* (1984) 155 Cal.App.3d 482, 489-490 [sanction order that deemed party to have waived all claims of privilege concerning certain documents reversed because it went too far]; *Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304 [sanction of striking defendant's answer and ordering entry of its default for failure to answer interrogatory was punitive because lesser sanctions would have sufficed].)[7] None of these address the issue raised by Knapp: whether money sanctions may be imposed against a law firm that

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[6] Had Skousen denied such a request for a continuance, we believe it would be in no position to complain about Knapp's conduct.

[7] Knapp also relies on *Parker v. Wolters Kluwer United States, Inc.* (2007) 149 Cal.App.4th 285, 301, which concerned whether an award of discovery sanctions in favor of a party that did not propound the discovery was proper. That is not the issue before us, and the decision is therefore inapplicable.

withdraws from representing a party after that law firm has committed an act of discovery misuse.[8] As a result, we conclude that these authorities are inapplicable.

Money sanctions are authorized against *anyone* who commits an act of discovery misuse such as making unmeritorious objections. We recognize the difficult situation Knapp found itself in when it concluded it must withdraw at a time when discovery deadlines were looming. However, we do not believe that lawyers should escape the consequences of engaging in such conduct simply because they withdrew from representing the party on whose behalf they prepared and served those objections. Nor do we accept Knapp's implied contention that the chain of causal responsibility for Skousen's damages was broken once Knapp substituted out of the case.[9]

According to the declaration of Skousen attorney Mark Krone, he wrote a letter to Knapp concerning the unmeritorious objections, then met and conferred by phone with Knapp, during which Krone first learned that Knapp was about to withdraw from the case. Implicit in this is that Krone also spent some time reviewing the discovery responses. In short, Skousen incurred legal fees dealing with Knapp's objections before learning that it would have to repeat the process with new counsel. Krone declared that his hourly rate was $195, meaning that the trial court's award of $750 in sanctions against Knapp represented a determination by the trial court that Skousen spent just over 3.8

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[8] Skousen cites federal court decisions which hold that sanctions are permissible under this scenario pursuant to Rule 11 of the Federal Rules of Civil Procedure. (*Holgate v. Baldwin* (9th Cir. 2005) 425 F.3d 671, 677; *In re Itel Securities Litigation* (9th Cir. 1986) 791 F.2d 672, 675). Code of Civil Procedure section 128.7 is modeled on Rule 11 and provides for sanctions against lawyers based on the notion that papers they sign and file with the court are presented in good faith based on nonfrivolous contentions. However, sanctions under this section are not allowed for discovery requests, responses, or objections. (Code Civ. Proc., § 128.7, subd. (g).) Accordingly, we do not find the federal Rule 11 cases persuasive authority on this issue.

[9] We believe the trial court reasonably weighed the relative equities in determining whether Knapp or DiMauro was primarily responsible for the discovery misuse, assessing sanctions against DiMauro that were nearly four times the amount against Knapp. This distinction apparently reflected the trial court's view of Knapp's predicament.

hours responding to Knapp's discovery abuse. By contrast, the Chamreun's new lawyer was sanctioned in the amount of $2,750.

Knapp does not contend that this allocation is either unsupported by the evidence or represents an abuse of discretion by the trial court. We presume that the trial court made this finding and determined that this allocation was proper given Knapp's role in the discovery dispute.

DISPOSITION

The sanctions order against Knapp is affirmed. Respondent shall recover its appellate costs.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.